NOV 2 3 1
HAROLD B. WILLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~485~~ 11

UNITED STATES GYPSUM COMPANY,
Appellant,

against

UNITED STATES OF AMERICA; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC., and NEWARK PLASTER COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM MADE BY APPELLEES, NEWARK PLASTER COMPANY AND EBSARY GYPSUM COMPANY, INC., PETITIONERS IN THE COURT BELOW

BENJAMIN P. DEWITT,
SIDNEY PEPPER,
120 Broadway,
New York 5, New York,
Counsel for Appellee,
Newark Plaster Company.

JOSEPH S. RIPPEY,
612 Powers Building,
Rochester 14, New York,
Counsel for Appellee,
Ebsary Gypsum Company, Inc.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 485

UNITED STATES GYPSUM COMPANY,

Appellant,

against

UNITED STATES OF AMERICA; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC., and NEWARK PLASTER COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

Appellees, Newark Plaster Company and Ebsary Gypsum Company, petitioners below, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final decree of the United States District Court for the District of Columbia be affirmed on the ground that the questions presented are so unsubstantial as not to need further argument.

Statement

This is a direct appeal under Section 2 of the Expediting Act, 15 U. S. C. 29, from the final decree entered on December 9, 1954 by a District Court of three judges, specially constituted pursuant to Section 1 of the Expediting Act, 15

U. S. C. 29, modifying its final decree of May 15, 1951 in this Government antitrust suit.

Prior to the entry of that decree on May 15, 1951 this suit was three times before this Court, 333 U. S. 364, 339 U. S. 959 and 960 and 340 U. S. 76.

In Article IV of the final decree of May 15, 1951 the District Court adjudged the patent license agreements between United States Gypsum Company and the respective appellees "illegal, null and void".

No appeal was taken from the final decree of May 15, 1951.

Although the said license agreements had been adjudged illegal, null and void, United States Gypsum Company in 1953 commenced actions against the respective appellees in various jurisdictions in which it sought recoveries on the said license agreements.

Thereafter, these appellees and National Gypsum Company and Certain-Teed Products Corporation filed petitions with the United States District Court for the District of Columbia to enjoin United States Gypsum Company from continuing the said actions brought by United States Gypsum Company against them.

The District Court found that United States Gypsum Company continued to misuse its patents down to the dates on which United States Gypsum Company commenced its actions against the appellees. The District Court in its decree entered December 9, 1954 therefore modified its prior decree of May 15, 1951 to direct United States Gypsum Company to discontinue and dismiss with prejudice its pending actions against these appellees as well as the actions against National Gypsum Company and Certain-Teed Products Corporation. A subsequent motion by United States Gypsum Company for a new trial was denied by the District Court on June 30, 1955.

A further statement of the proceedings in this suit is contained in a similar motion to affirm, made by appellee, National Gypsum Company, and these appellees hereby adopt and join in such statement with the same force and effect as if set forth at length herein.

Argument

These appellees hereby also adopt and join in the argument set forth in the said motion to affirm of appellee, National Gypsum Company, with the same force and effect as if set forth at length herein.

We respectfully submit, therefore, that appellant presents no substantial question for the decision of this Court and that the final decree of the District Court entered December 9, 1954 should be affirmed.

November 18, 1955.

Respectfully submitted,

BENJAMIN P. DEWITT,
SIDNEY PEPPER,
Counsel for Appellee, Newark Plaster Company,

JOSEPH S. RIPPEY,
Counsel for Appellee, Ebsary Gypsum Company, Inc.